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SUBJECT: FRANCE TO IMPLEMENT EU TAKEOVER DIRECTIVE; DECREE
ON "STRATEGIC SECTORS" AT A STANDSTILL

Ref: Paris 5441

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SUMMARY

1. (SBU) The Council of Ministers has adopted a draft bill implementing the EU Takeover Directive, which will allow targeted French companies to adopt anti-takeover defenses permitted in a potential bidder's own country. This bill comes on top of a draft decree to create a list of ten "sensitive sectors" to be protected from foreign takeover attempts, which has drawn fire from the EU Commission and is currently at a standstill. These two separate initiatives have been in the making for some time and were presented together as part of Prime Minister Villepin's "economic patriotism" agenda in July 2005, in response to the critical domestic reaction to rumors that PepsiCo was attempting to acquire yoghurt and drink-maker Danone. End Summary.

Upcoming implementation of the EU Takeover Directive

2. (SBU) Adopted on April 21, 2004 after 15 years of failed attempts, the Takeover Directive was one of the more controversial pieces of legislation in this sector introduced by the EU Commission. Then-Internal Market Commissioner Frits Bolkestein devised the original proposal. Bolkestein was also responsible for the much-maligned (at least in France) Services Directive, which according to many analysts played a crucial part in the French vote against the EU Constitution in May 2005. The Commission's draft Directive was designed to provide common principles for cross-border takeover bids, boost shareholder power, and limit the rights of EU countries to protect their companies from takeovers. However, the compromise text that France is expected to implement before the end of the year, following parliamentary approval, is a pale shadow of the Commission's original text in that it allows for substantial opt-outs.

3. (SBU) The most general opt-out provision, which France intends to implement, is the reciprocity clause found in Article 12, which would allow French target companies to take defensive measures without shareholder approval (as required in Art. 9) if the takeover bid comes from a country that allows such defenses. The French Financial Markets regulator AMF will have the difficult task of deciding whether reciprocity exists or not.

4. (SBU) The only hope for modification of the directive, which should be implemented by member-states by May 2006, lies with the Commission which is required to review it every five years. If French Parliament approves the GOF draft bill before the end of the year, France will succeed in enforcing an EU directive prior to its implementation date, an uncommon occurrence.

The GOF decree on "sensitive sectors"

5. (SBU) The French Government draft decree designed to shield from foreign bids domestic industries in ten sectors it considers strategic, (i.e. defense, biotechnology, space technology, telecommunications, casinos, encryption IT security and antidote production) has run into trouble from the EU Commission determined to avoid the possibility of "disguised protectionism." EU Internal Market Commissioner Charlie McCreevy told the press on September 19 that he had made it clear to the French authorities that takeover defenses could only be for "very specific and limited stances." He further added that France had kept the Commission informed of its plans over the past year.

6. (SBU) The attitude of the EU Commission has allegedly put the French State Council, which approves government decrees (as they are not submitted to the parliament for approval), in a difficult position. The Council is holding the draft bill in the hope that the government will bow to EU pressure and shorten its list of most vital industries.

Comment

17. (SBU) While both French initiatives were developed separately and have been in the making for some time, they have become prime elements in de Villepin's "economic patriotism" agenda. Capitalizing on French insecurities and fears of job losses and outsourcing, he is hoping to head off French labor unrest or at least prevent it from snowballing. His government's move to introduce flexibility in the French labor market could spark popular discontent on October 4, when unions are organizing what they hope will be a general strike for greater purchasing power. End Comment. Stapleton